

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 13, 2013

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 13, 2013. Members present were Chairman Barry Stumbo, Joseph Smith, Janice Meyer, James Griggs, Noel White, Thomas Glover, and Kathryn Moore. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Mike Sanner and Tracy Jones, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammye McMullen.
- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the November 15, 2013 meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously to approve the minutes of the November 15, 2013 meeting.
- III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

Staff Comment - At this time, Mr. Emmons announced that someone in the audience wished to request postponement of an item.
 - a. **C-2013-62: K. WESLEY FARLEY** - an appeal for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone, at 573 - 575 Maryland Avenue (Council District 2).

The Staff Recommends: Postponement, for the following reasons:
 - a. It is unclear at this time that this location will be able to simultaneously accommodate both the proposed and the existing business uses.
 - b. Improvements to the parking lot, including storm water management and landscaping, are required by the Zoning Ordinance, but are not proposed by the applicant. Additional time will allow the applicant to address these concerns.
Representation – Mr. K. Wesley Farley, applicant, was present, and came to the podium at this time. Mr. Farley stated that he has amended his conditional use application to include a variance, and proposed a postponement until the January 31, 2014 meeting, in order to better prepare his information.

Action – A motion was made by Ms. Moore, seconded by Ms. White, and carried unanimously to postpone **C-2013-62: K. WESLEY FARLEY** to the January 31, 2014; Board of Adjustment meeting.
 - b. At this time, Mr. Emmons announced that **C-2013-68: CENTRAL KY UNITED, INC. (aka UNITED TALENT)** at 1709 Jaggie Fox Way, which was postponed to this meeting, had withdrawn this request (as noted on the agenda). He stated that this does not require any action of the Board. He just wanted to note that it had been withdrawn by the applicant and would not be heard today.
 2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
 - B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
 - C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

D. **Conditional Use Appeals** (Sounded Items)

1. **C-2013-74: BARBARA DALE** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, at 4189 Forsythe Drive (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available for this use. As a condition of approval, a fenced and screened outdoor play area will be provided outside of the designated floodplain. Noise and other disturbances to surrounding property owners are not anticipated, as care for the twelve children will only be provided during daytime hours.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and a clarified, modified, site plan, to the approval of the Division of Planning; and shall only be operated from 6:00 am - 6:00 pm Monday-Friday.
2. All necessary permits, including issuance of a Zoning Compliance Permit, Fence Permit, and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the child care use for more than six (6) children at this location.
3. The fence shall be erected outside the limits of the current floodplain in the rear of the property.
4. All play equipment for children to be located in the rear yard, shall be located between the fence and the rear wall of the dwelling, outside of the floodplain.
5. The Division of Planning shall not issue a Zoning Compliance Permit until adequate fencing is in place, is deemed to be safe, and meets the requirements of the Zoning Ordinance.
6. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
7. This conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Ms. Barbara Dale, appellant, was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

At this time, Chairman Stumbo asked if the Board or staff had any questions for Ms. Dale.

Board Questions – Ms. Meyer asked Ms. Dale if she had children in her household living with her right now. Ms. Dale said no; they moved out November 22. She also said that she had five children, which were her grandchildren, and her daughter, who were living in the basement; but she needed that space for the daycare. Ms. Meyer then asked if that meant Ms. Dale was going to have strictly daycare children. Ms. Dale stated yes.

At this time, Ms. Moore said that she had a question for the staff. She said that she noticed in Ms. Dale's letter that she had planned to hire two employees. She asked if this was going to be a problem with a conditional use permit or the restrictions of a conditional use. Mr. Sallee stated that it is not a problem; it is the staff's understanding that it is a state law requirement for licensing of family child care; and that there are minimum ratios that have to be met, depending on the age of the children. He said generally, for family child care for up to twelve, it is usually two or three persons. One is presumed to be the resident, which, under the ordinance, has to be one of the caregivers. Ms. Moore then asked if this affects the parking

requirements. Mr. Sallee said no, the parking requirement is for one additional space, besides the one required for the dwelling.

Mr. Griggs then asked staff if there are going to be 12 children (12 paying, customer children), and there is a large number of grandchildren, if the grandchildren are allowed to be there while they have 12 paying customers. Mr. Sallee stated he is not sure about as many as 12 children; his understanding of the state regulations years prior, was that for family child care of up to 6 children, which is an accessory use in the residential zones, that that number did include any children residing in the dwelling. He said that he was not sure if this is the case for up to 12 children or not. Ms. Dale then stated that if there are grandchildren, they are counted in that 12. Mr. Griggs then said therefore, there should be no more than 12 children under Ms. Dale's or her employee's care, which Ms. Dale confirmed.

At this time, Chairman Stumbo asked if the Board or staff had any questions for Ms. Dale.

Staff Comment - Mr. Emmons stated he would like to note for the record that the staff had not received any new letters since the packet of information and letters that were passed out at the last meeting in November. He stated the only thing new that was submitted was the information that Ms. Dale provided in response to the packet that was submitted at the November hearing.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action - A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously to approve **C-2013-74: BARBARA DALE** - appeal for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, at 4189 Forsythe Drive, as recommended by the staff and subject to the seven conditions outlined by staff.

2. **C-2013-78: ELNA MARIE PHILLIPS** - appeals for a conditional use permit to provide family child care for up to 12 children in a Mobile Home Park (M-1P) zone, at 423 Fairdale Drive (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available for this use. A large fenced outdoor play area will be provided.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and an Occupancy Certificate, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning child care for more than six (6) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the applicant no longer reside at this location.

Representation - Ms. Elna Marie Phillips, appellant, was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

At this time, Chairman Stumbo asked if the Board or staff had any questions for Ms. Phillips.

Board Questions - Mr. Glover stated that the only thing that he noticed that separates this case from the prior one is the fact that this is in a mobile home park, and the words "mobile home park" were capitalized. He asked what that meant. Ms. Phillips said that she did not know. She said that she has lived there for 20 years, and this was something the owner of the property actually had asked her to do for the last 10, and she was just getting to it.

Mr. Glover then asked if the regulations of the Kentucky Cabinet for Health and Family Services were any different, to which she responded that they are not.

In response to Mr. Glover's question, Mr. Emmons said that "Mobile Home Park" is the legal title of the M-1P zone; it is a zoning category, much like a Single-Family Residential (R-1C) zone.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Smith, and carried unanimously to approve **C-2013-78: ELNA MARIE PHILLIPS** - appeal for a conditional use permit to provide family child care for up to 12 children in a Mobile Home Park (M-1P) zone, at 423 Fairdale Drive (Council District 1), for the reasons recommended by the staff and subject to the four conditions recommended by the staff.

3. **C-2013-79: CENTER POINT CHURCH** – appeals for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 1300 E. New Circle Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses are of a commercial nature and are not likely to be disturbed by typical church activities. The church's highest parking needs are during the off-hours of the nearby commercial entities and should not overlap; therefore, adequate parking is available for the proposed use.
- b. All necessary public facilities and services are available and adequate for the proposed use, including off-street parking.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.

Representation – Mr. Jeff DeMoss, was present representing the church; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White; seconded by Mr. Glover, and carried unanimously to approve **C-2013-79: CENTER POINT CHURCH** - appeal for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 1300 E. New Circle Road, as recommended by staff and subject to the three conditions as recommended by staff.

E. **Variance Appeals**
(Sounded Items) (Cont'd)

1. **V-2013-77: NEPTALI DIAZ** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to retain a detached storage shed in a Single Family Residential (R-1C) zone, at 1910 Picadilly Street (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. Provided the applicant can obtain an encroachment agreement from all utility companies, as well as the Urban County Government, reducing the required side yard from 8' to 1.5', for the purpose of retaining the accessory structure in the side yard, will not adversely affect the public health, safety, or welfare, nor adversely affect the character of the area.
- b. There would not be an unreasonable circumvention of the Zoning Ordinance with this variance, as it is common for storage sheds to be 18" from side and rear property lines, as there is one on the adjacent property as well.
- c. The special circumstance that applies to this property is the unusually wide existing side yard, which is about 20 feet in width, which is more than double the required 8-foot minimum.
- d. Strict application of the Zoning Ordinance will require the property owner to move the structure a considerable distance on the lot, which due to its size and type of construction; will be difficult and costly for the appellant.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as it was unknown to him; at the time, that a permit was required for an accessory structure.

This recommendation of approval is made subject to the following condition:

1. The applicant shall obtain a building permit from the Division of Building Inspection, including a

reference to the Board's action after receiving an encroachment agreement from all the utility companies and the Urban County Government prior to the issuance of a Permit.

2. All encroachment agreements and the Zoning Compliance Permit and the Building Permit shall be obtained within four months of the Board's action, or this shed will be required to be relocated a minimum of 5 feet from the side property line, at the owner's expense.

Representation – Mr. Neptali Diaz, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

At this time, Chairman Stumbo asked if the Board or staff had any questions for Mr. Diaz.

Board Questions – Mr. Griggs asked Mr. Diaz if he had built this shed himself. Mr. Diaz replied affirmatively. Mr. Griggs asked him if he had construction experience. Mr. Diaz said that his brother has, but not a whole lot. Mr. Griggs then asked how he decided how far away to put it from the property line, and how he decided what size roof framing members to use. Mr. Diaz said that he based it off of a Home Depot model. His neighbor has one that is a little bit smaller than his, which is a little bit closer to his property line. He also said that he didn't think it was going to require a permit, but found that it was.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover; seconded by Mr. Griggs, and carried unanimously to approve **V-2013-77: NEPTALI DIAZ** - appeal for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to retain a detached storage shed in a Single Family Residential (R-1C) zone, at 1910 Picadilly Street, for the reasons stated by staff; subject to the two conditions stated by staff.

F. Administrative Reviews – There were none.

- IV. BOARD ITEMS - The Chair announced that any items a Board member wished to present would be heard at this time. None were presented.
- V. STAFF ITEMS - The Chair announced that any items a Staff member wished to present would be heard at this time. None were presented.
- VI. NEXT MEETING DATE - The Chair announced that the next meeting date would be January 31, 2014.
- VII. ADJOURNMENT - Since there was no further business, the Chair declared the meeting adjourned at 1:54 p.m.

Barry Stumbo, Chair

James Griggs, Secretary